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IN THE

Supreme Court of the United States

October Term, 1957
No. 319

HOMER C. MILLS,

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Petition for Rehearing for Writ of Certiorari to the District Court of Appeal, State of California, Second Appellate District, Division Two.

HOMER C. MILLS,
6075 Franklin Avenue,
Hollywood 28, California
Petitioner.

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Petition for Rehearing for Writ of Certiorari to the District Court of Appeal, State of California, Second Appellate District, Division Two.

To the Honorable, the Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Your Petitioner respectfully shows:

That Petition for Writ of Certiorari was denied by this Court on October 14, 1957. In support of this application for a rehearing, your Petitioner submits:

1. The Learned District Court of Appeal of California found a clear violation of Petitioner's civil rights in holding that the Fourteenth Amendment to the Constitution had been violated in the unlawful search and seizure mentioned. It affirmed the conviction of Petitioner on one

count, although to do so it approved and considered the evidence used resulting from such unlawful search and seizure. The Supreme Court of California denied a hearing, although three of the seven Judges were in favor of such hearing.

2. It is without question that evidence obtained by the police upon which it is claimed supports the conviction of the one remaining count was obtained by fraud and the whole matter was an "entrapment" of Petitioner.

Fraud should vitiate any transaction. In *Sorrells v. United States*, 287 U. S. 435, 53 S. Ct. 210, 77 L. Ed. 413, 422, 453, this Court stated:

> ". . . The defense (entrapment) is available, not in the view that the accused, though guilty may go free, but that the Government, cannot be permitted to contend that he is guilty of a crime where the Government officials are the instigators of his conduct . . ."

Justice McReynolds, aptly states:

> ". . . Proof of entrapment, at any stage of the case, requires the Court to stop the prosecution, direct that the indictment be quashed and the defendant set at liberty . . ."

3. Throughout the opinion of the Learned District Court of Appeal, the conduct of Petitioner was severely criticized, although the Court found his Constitutional rights had been flagrantly violated. Such Court made no finding whatever that any error had been committed by the Trial Court as to the 12 counts which were reversed, yet it directed a reversal of same.

4. The Learned District Court of Appeal did find ". . . Defendant's own testimony would have sustained a finding in his favor on this issue but it was disbelieved by the jury and the trial Judge . . ." (See Appendix, p. 17.) There was no jury trial and the whole opinion seems to have been loosely written.

5. In view of the record, Petitioner urges a reconsideration herein and that a hearing be granted so that the matter may be heard on it's merits. Petitioner could not have had a fair trial and the record brings his contention within the authorities cited in his original Petition. Respondent did not file an answer to the petition of Petitioner and this fact should lend support to this application for a rehearing.

Respectfully submitted,

HOMER C. MILLS,

Petitioner.